

OUTLINE OF TESTIMONY
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MULTILATERAL INTERNATIONAL DEVELOPMENT, MULTILATERAL
INSTITUTIONS AND INTERNATIONAL ECONOMIC, ENERGY AND
ENVIRONMENTAL POLICY

HEARING ON
MULTILATERAL ECONOMIC INSTITUTIONS AND U.S. FOREIGN POLICY

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*WE NEED MORE MULTILATERALISM TO ADDRESS THE WORLD'S 21ST CENTURY
PROBLEMS—RENOVATING OUR EXISTING MULTILATERAL INSTITUTIONS IS THE BEST
WAY TO GET THERE*

I. Introduction

The multilateral economic institutions created in the wake of World War II—the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) are all under great strain due to:

- 1) A waning faith in multilateralism and multilateral institutions, accompanied by a backlash against globalization,
- 2) Concerns over their effectiveness,
- 3) Outdated mandates that do not address 21st century problems, and
- 4) Questions about their legitimacy and relevancy.

Because the crisis is the most acute at the World Trade Organization, my testimony will focus on the WTO.

II. What's Wrong with the WTO?

The WTO was created in 1995 as a successor to the General Agreement on Tariffs and Trade (GATT) at the height of support for multilateralism and multilateral institutions. In recent years, many have expressed frustration and concern with the WTO. The problems include:

- 1) a lack of balance between the three legs of the WTO stool—the negotiating arm is weak and WTO members have reached only one new agreement –on trade facilitation—since 1995, while the dispute settlement arm has been until 2017 considered very strong—possibly too strong, while the executive arm is viewed as highly competent but lacking in authority to drive change.
- 2) a limited mandate that does not readily allow the WTO to take on the “trade and . . . “ issues connected to trade’s impact on the environment, labor, distribution of the benefits of trade, competition policy or corruption around trade, or to ensure that the trading system rules contribute to the Sustainable Development Goals agreed to by the world’s leaders in 2015.
- 3) a bifurcation of members into “developed” versus “developing” country camps, with no in between for the emerging economies such as India, Russia, Brazil, or South Africa and no easy way to address the rise of China—now the largest merchandise exporter and second largest merchandise importer in the world.
- 4) a lack of enforcement of the transparency and notification requirements of the WTO.
- 5) a recent willingness, led by the United States, to impose tariffs and retaliatory tariffs that violate the WTO’s basic rules.

III. What Can be done to Fix It?

Given the impossibility in today’s climate of creating new multilateral institutions, it is imperative that the WTO be renovated to make it a more efficient and effective organization. How?

1. New measures to enforce transparency and notification requirements
2. New rules relating to subsidies to address the major subsidy failings: a) too narrow a definition of government or public body that can be the “giver” of a subsidy, b) too high an evidentiary burden and c) an ineffective remedy that simply calls on countries to “remove the adverse effects” of an illegal subsidy.

3. New negotiation dynamics to allow more plurilateral negotiations among a coalition of interested countries
4. Empower the WTO Secretariat to recommend solutions and drive toward negotiated outcomes
5. Enhance the mandate of the WTO to include the “trade and . . .” issues.

IV. The United States Needs the WTO to Effectively Address Its Concerns with China

It is in the United States’ interest to renovate the WTO to make it more effective and relevant, if for no other reason than to provide the best forum in which to address concerns over China. The best and most effective way to get deep and broad economic reform in China is through a big, bold case at the WTO, brought by a coalition of countries that share the United States’ concerns with China’s practices, even if they do not share the United States’ unilateral tactics.

A. Why A Big, Bold WTO Case is the Best Tool to Address the Deep, Systemic China Problems

First, a broad WTO case represents the best opportunity to bring together enough of the trading interests in the world to put sufficient pressure on China make it clear that fundamental reform is required. The U.S. needs to use the power of collective action to impress upon both China and the WTO how significant the concerns really are.

Second, a comprehensive WTO case would restore confidence in the WTO and the rules of the trading system.

Third, working with a coalition on such a case would make it less likely that the United States would accept a limited agreement connected to the U.S.-China bilateral trade deficit.

B. Why Hasn’t Such A Case Been Brought Before Now?

1. Bringing a collective case, with multiple complainants, is hard and requires tremendous coordination of both the legal tasks of drafting and pleading and of the substantive arguments to be made.
2. Many countries in the past have been reluctant to bring WTO disputes unless they were virtually assured of a victory and a big, bold case has some risks.
3. Many countries have been reluctant to take on China for fear of retaliation but a broad, coalition-based case would lessen the likelihood that China would or could effectively retaliate against all of the coalition partners.
4. The evidentiary hurdles of bringing a case against China—with its lack of transparency—are formidable, but a coalition case would allow the pooling of evidence from the US, the EU, Japan, Canada and others.
5. WTO cases have already been tried, with limited success. The problem is that the challenges were relatively narrow, limited to a few Chinese measures, or to a particular industry or set of producers. No panel has yet been requested to rule on the Chinese systems as a whole.

C. The WTO Case against China

The essential thrust of any WTO case should be to hold China to the specific commitments it made when it joined the WTO in 2001 and to the overarching understanding embodied in the Marrakesh Declaration that WTO members participate “based upon open, market-oriented policies.”

The WTO case should include both a “non violation” claim that the United States and all other WTO members had legitimate expectations that China would increasingly behave as a market economy, but it hasn’t, along with a dozen specific claims that China made when it joined the WTO but are currently being violated by China’s practices, including China’s commitments not to condition investments on technology transfers, to provide an independent judiciary to review certain decision, not to discriminate against foreign technology in its regulations, to adequately protect intellectual property and more. The objectives of such a WTO case would include:

- 1) Seeking recognition from China of where and to what degree its economic structure can or cannot fit within a fair, transparent and market-based trading system;
- 2) Reaching an understanding of where the current set of WTO rules need to be changed to address the problems with China (with disciplines on subsidies at the top of that list); and
- 3) Giving China the opportunity to make a choice that is its sovereign right to make – whether it wants to change its system to one that fits within the parameters of the WTO or not.

V. Conclusion

The increasingly complex and interconnected problems facing the world will require more multilateralism, not less. As such, it is critical that the institutions that were set up to and have always worked in a multilateral fashion be updated so that their mandates are sufficiently broad to allow them to address the 21st century problems we face—particularly climate change and the growing wealth gap-- and sufficiently tailored to ensure that each can efficiently address those issues that fall within its purview while coordinating with one another to ensure no issues fall between the cracks. Because the problems at the WTO are the most urgent and because the United States needs the WTO to successfully address the rise of China, this renovation work should begin at the WTO.